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Attorneys for the Cipolla Defendants

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY**

In re:

NATIONAL REALTY INVESTMENT
ADVISORS, LLC,

Debtor.

AIRN LIQUIDATION TRUST CO., LLC, in
its capacity as Liquidation Trustee of the
AIRN LIQUIDATION TRUST,

Plaintiff,

v.

JOSEPH CIPOLLA, CIPOLLA & CO., LLC,
CFA ASSURANCE SERVICES LLC, CFA
REVIEW SERVICES LLC, CFA TAX
SERVICES LLC, CIPOLLA FINANCIAL
ADVISORS LLC, and DOES 1-100,

Defendants.

Chapter 11

Case No. 22-14539 (JKS)

Hon. John K. Sherwood

Adv. Pro. No. 24-01097-JKS

**MOTION OF CIPOLLA DEFENDANTS TO DISMISS PLAINTIFF'S
ADVERSARY COMPLAINT PURSUANT TO RULE 7012 OF THE
FEDERAL RULES OF BANKRUPTCY PROCEDURE**

Defendants Joseph Cipolla (“Cipolla”), Cipolla & Co., LLC (“Cipolla & Co.”), CFA Assurance Services LLC, CFA Review Services LLC (“CFA Review”), CFA Tax Services LLC (“CFA Tax”) and Cipolla Financial Advisors LLC (collectively, the “Cipolla Defendants”), pursuant to Rule 7012 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), file this motion to dismiss (the “Motion to Dismiss”) the *Adversary Complaint* [ECF. No. 1] (the “Complaint”) filed by the AIRN Liquidation Trust Co., LLC (the “Liquidation Trust”), in its capacity as Liquidation Trustee of the AIRN Liquidation Trust (the “Liquidation Trustee”), in the chapter 11 bankruptcy cases of *In re National Realty Investment Advisors, LLC, et al.*, Case No. 22-14539 (Bankr. D.N.J.) (JKS) (the “Bankruptcy Case”). In support hereof, the Cipolla Defendants rely upon the *Memorandum of Law in Support of Motion of Cipolla Defendants to Dismiss Plaintiff’s Adversary Complaint Pursuant to Rule 7012 of the Federal Rules of Bankruptcy Procedure* (the “Memorandum of Law”), filed simultaneously herewith, and, for the reasons set forth therein, respectfully request that the Court enter the proposed *Order Dismissing Plaintiff’s Adversary Complaint Pursuant to Rule 7012 of the Federal Rules of Bankruptcy Procedure* (the “Order”), submitted herewith.

JURISDICTION

1. The Court has jurisdiction over the Motion to Dismiss pursuant to 28 U.S.C. §§ 157 and 1334, and the *Standing Order of Reference* from the United States District Court for the District of New Jersey, entered on July 23, 1984, and amended on September 18, 2012 (Simandle, C.J.).

2. Venue is proper in this district under 28 U.S.C. §§ 1408 and 1409.

3. Pursuant to Bankruptcy Rule 7012(b), the Cipolla Defendants do not consent to the entry of a final order or judgment on any “non-core” matters in connection with the above-captioned adversary proceeding.

PROCEDURAL BACKGROUND

4. On June 7, 2022 (the “**Petition Date**”), National Realty Investment Advisors, LLC (“**NRIA**”), along with over 130 affiliated entities (together with NRIA, the “**Debtors**”) each filed voluntary petitions for relief under chapter 11, title 11, United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the District of New Jersey (the “**Court**”).

5. On July 25, 2023, the Debtors, with the support of the Official Committee of Unsecured Creditors, filed the *First Amended Joint Chapter 11 Plan of Liquidation of National Realty Investment Advisors, LLC and its Affiliated Debtors* (the “**Plan**”). Bankruptcy Case ECF No. 3256.

6. On August 10, 2023, the Court entered the *Findings of Fact, Conclusions of Law, and Order Confirming First Amended Joint Chapter 11 Plan of Liquidation of Natural Realty Investment Advisors, LLC and its Affiliated Debtors*. Bankruptcy Case ECF No. 3599. The Plan went effective on August 25, 2023. Bankruptcy Case ECF No. 3711.

7. Pursuant to the Plan, the Liquidation Trust was created to which certain causes of action were purportedly transferred, and the Liquidation Trustee was appointed as trustee thereof. Bankruptcy Case ECF No. 3256

8. On February 23, 2023, the Liquidation Trustee filed the Complaint against the Cipolla Defendants, thereby commencing the above-captioned adversary proceeding. ECF No. 1.

RELIEF REQUESTED AND REASONS THEREFOR

9. The Cipolla Defendants submit this Motion to Dismiss, pursuant to Rule 12 of the Federal Rules of Civil Procedure (the “Civil Rules”), made applicable by Bankruptcy Rule 7012. In support of the Motion to Dismiss, the Cipolla Defendants rely upon the Memorandum of Law filed concurrently herewith.

10. The Motion to Dismiss seeks the dismissal of all Counts in the Complaint with prejudice for, among other things, the Liquidation Trustee’s lack of standing to bring pre-judgment tort claims under applicable law, the *in pari delicto* doctrine, and the Liquidation Trustee’s failure to properly state a claim for relief under Civil Rules 8 and 9, made applicable by Bankruptcy Rules 7008 and 7009, respectively.

NOTICE

11. Notice of the Motion to Dismiss is being provided to counsel for the Liquidation Trustee, Ice Miller LLP, via (i) regular mail, postage pre-paid and (ii) electronic mail, as well as to all parties having formally requested notice pursuant to Bankruptcy Rule 2002 via the Court’s CM/ECF system.

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WHEREFORE, for the reasons set forth herein and in the Memorandum of Law, the Cipolla Defendants respectfully request that, pursuant to Bankruptcy Rule 7012, the Court enter the Order dismissing the Complaint with prejudice.

Dated: April 25, 2024
Newark, New Jersey

GIBBONS P.C.

By: /s/ Robert K. Malone
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